



REMARKS

Claims 1-19, 21-23, 37-43, 45, 47-55 and 64-95 are pending. The Examiner has allowed claims 18, 19, 21-23, 48-55 and 64-90. The Examiner has rejected claims 1-17, 37-43, 45, 47 and 91-93 and objected to claims 94-95.

Double Patenting

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,349,096. Claims 37-43, 45 and 47 are also rejected for obviousness-type double patenting as being unpatentable over claim 39 of the '096 patent. Applicants do not agree with the rejection and respectfully traverse the rejection of obviousness-type double patenting. Nevertheless, Applicants are herewith filing a Terminal Disclaimer to obviate the double patenting rejections.

Rejection under 35 U.S.C. § 102(e)

Applicants respectfully traverse the rejection of claims 91-93 under 35 U.S.C. 102(e) as being anticipated by Civanlar et al. (U.S. Patent No. 5,995,606; hereafter "Civanlar").

In order to establish a proper 102 rejection, each element of the claim must be disclosed expressly or inherently within the prior art. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

With respect to claim 91, Civanlar fails to teach “(a) receiving a telephone call based request for communication service from a first modem; and (b) determining whether said communications service is associated with a time sensitive service or a non-time sensitive service” (emphasis added). Civanlar discloses in various embodiments, for example, in FIGS. 3, 4, 6, 8, or 10, making a service request that requires a switched network connection (so-called dedicated switched network path) by way of a pre-established Internet or LAN connection (so-called packet switched path), and then establishing the switched network connection. Civanlar fails to disclose determining whether a communications service of a telephone call based request is associated with a time sensitive service or a non-time sensitive service. In contrast, in Civanlar, an Internet or LAN based connection is first established and then a switched network connection is requested and established through the Internet or LAN based connection. Thus, Civanlar fails to expressly or inherently disclose “(a) receiving a telephone call based request for communication service from a first modem; and (b) determining whether said communications service is associated with a time sensitive service or a non-time sensitive service” (emphasis added). Therefore, Applicants' claim 91 is patentable over Civanlar.

Moreover, claims 92-93 depend from claim 91 and require all of the limitations of claim 91. Therefore, claims 92 and 93 are also patentable over Civanlar.

Therefore, the rejection of claims 91-93 under § 102(e), as anticipated by Civanlar, is improper and should be withdrawn.



Allowable Subject Matter

Claims 94-95 are objected to as being dependent upon the rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for indicating allowable subject matter. However, as stated above, Applicants believe that independent claim 91 is allowable over the prior art.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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